IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. NO. 916 OF 1990
DATE OF DECISION: 5.7.2006

NIRMAL AND TWO OTHERS

....APPELLANTS

VERSUS

RAM KANWAR AND THREE OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: MR. GOVIND GOEL, ADVOCATE
FOR THE APPELLANTS

MS. RITU BAHRI, DAG, HARYANA

MR. INDERJIT SHARMA, ADVOCATE
FOR INSURANCE COMPANY-RESPONDENT NO.4

JUDGMENT

This is an appeal filed by the wife, daughter and mother of deceased Shiv Kumar on account of his death. At the very outset, it is stated by counsel for the appellants that Smt. Parmeshwari Devi mother of deceased Shiv Kumar has expired during the pendency of appeal, so the present appeal may be treated only qua the wife and daughter of deceased Shiv Kumar.

While deciding the claim petition, the Tribunal determined the income of the deceased who was stated to be running Kiryana Shop, had a matador and was also partner in the printing press business, at Rs. 1,400/- per month with dependency at Rs. 900/- per month i.e. Rs.10,800/- per annum and applied a multiplier of 16. The compensation was arrived at Rs. 1,72,800/- which was reduced to a half because of findings on contributory negligence. The amount of compensation was ordered to be shared between claimants in the manner indicated in the award.

Brief facts of the case are that in the night intervening 8/9.5.1989 the driver of Haryana Roadway bus brought the bus to Gurgaon from Rohtak where he had taken a marriage party. The marriage party was dropped back outside village Gurgaon. The allegations in the claim petition

are that the driver of the bus sped away the bus while deceased Shiv Kumar was still in the bus. In spite of repeated requests made by deceased Shiv Kumar, the driver did not stop the bus and reached the turning of Post Office Chowk where it was slowed down. However, when the deceased Shiv Kumar was alighting from the bus, the driver again accelerated its speed and threw deceased Shiv Kumar from bus, who suffered head injuries. The occurrence was witnessed by Sh. Satish Chand Jain and Lal Singh Chowkidar. The matter was immediately reported to the Police by Lal Singh Chowkidar. The Tribunal while accepting the petition held that since there was contributory negligence, the amount of compensation awarded was reduced to 50%.

Counsel for the appellants submitted that it is clear from the evidence of Satish Chand Jain, an eye witness, that the bus was in fact stopped at the turning for a moment and was started again when the deceased Shiv Kumar was alighting from it. Even though the Tribunal has not doubted the presence of Satish Chand Jain at the spot at the time of accident at about 2.30 A.M. in the night intervening 8/9.5.1989 still his statement to the effect that the bus in fact was stopped at the turning for a moment but was started again when the deceased was alighting from it, was disbelieved. There is nothing on record to suggest that deceased Shiv Kumar was not a member of the marriage party which was taken by the driver of the bus. It is also evident from the addresses of the claimants in the petition that they were also residents of village Gurgaon. So deceased Shiv Kumar was to alight from the bus at the Gurgaon village and there is nothing on record to suggest that deceased Shiv Kumar had gone of his own with the bus to the city in the mid night and died while alighting from the running bus. The negligence of the driver of the bus is evident from the record. He even without confirming that all the passengers, the members of the marriage party, have alighted from the bus or not, speed up the bus and even in spite of repeated requests by deceased Shiv Kumar, did not stop it. Even when the bus was stopped for a moment, deceased Shiv Kumar was thrown out from the bus while he was alighting as the bus was again sped away by the driver. It has come in the statement of Satish Chand Jain that he had even heard the crying of man inside the bus for getting the bus halted

but the bus did not stop.

Seeing the totality of the circumstances and the evidence on record, I am of the view that it is not a case of contributory negligence. The findings of the Tribunal on this issue are reversed. Resultantly, the deduction made by the Tribunal on that account is uncalled for.

As far as the assessment of income of the deceased, dependency and application of multiplier is concerned, I am of the view that the assessment of income of the deceased Shiv Kumar needs no interference. However, keeping in view the facts and circumstances of the case it would be appropriate to assess the dependency at Rs. 1000/- (round off), that would mean a sum of Rs. 12000/- per annum. In addition to this, in my opinion, even the application of multiplier of 16 in the present case requires a little upgradation and the same is determined at 17. Applying the multiplier of 17 at the dependency of Rs. 12000/- per annum, the amount of compensation would be arrived at Rs. 2,04,000/-.

Since mother of deceased Shiv Kumar has already expired, the entire amount of additional compensation would be payable to the widow and daughter of deceased Shiv Kumar in equal shares, alongwith the interest at the rate of 7.5 per cent per annum from the date of the claim petition i.e. 7.6.1989. The award of the Tribunal is modified to the extent indicated above.

The appeal is disposed of accordingly.

July 5, 2006 **(RAJESH BINDAL)**
gsv **JUDGE**